

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 97-0367 ST
Sales And Use Tax
For Tax Periods: 1994 Through 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUES

1. Sales and Use Tax-Unitary Transaction

Authority: IC 6-2.5-2-1 (a), IC 6-2.5-4-1 (b), IC 6-2.5-1-1, IC 6-2.5-1-2, IC 6-2.5-4-1-(e) (2).

Taxpayer protests the assessment of tax on its sales as unitary transactions.

2. Sales and Use Tax- Exempt Sales

Authority: IC 6-8.1-5-1.

Taxpayer protests the disallowance of allegedly exempt sales determined by a projection.

3. Sales and Use Tax-Sales pursuant to a prescription issued by a Chiropractor

Authority: IC 25-10-1-1, 45 IAC 2.2-5-27.

Taxpayer protests the disallowance of exemption for spas prescribed by Chiropractors.

STATEMENT OF FACTS

Taxpayer is a retailer of portable spas, accessories, chemicals and a pool maintenance corporation. Taxpayer is a registered retail merchant. The Department assessed additional sales/use tax, interest and penalties after an audit. Taxpayer timely protested the assessment. Further facts will be provided as necessary.

SALES AND USE TAX: UNITARY TRANSACTION**DISCUSSION**

Pursuant to IC 6-2.5-2-1(a), Indiana imposes a sales tax on all retail transactions made in Indiana. IC 6-2.5-4-1(b) defines a retail transaction as the acquisition of tangible personal property by a retail merchant for the purpose of resale and subsequent transfer of that property to another for consideration. A retail transaction is defined as selling at retail.

Service transactions generally are not subject to the sales/use tax since they do not involve transfers of tangible personal property. The Legislature has enacted statutes to tax otherwise nontaxable services, by defining services such as furnishing accommodations as retail transactions. To the extent service income represents "any bona fide charges which are made for the preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records," the income becomes part of the retail merchant's gross retail receipts. IC 6-2.5-4-1 (e)(2).

A unitary transaction is any transaction that includes "all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated." IC 6-2.5-1-1. A retail unitary transaction is when a retail merchant purchases tangible personal property in his ordinary course of business and sells that property along with services as a unitary transaction. IC 6-2.5-1-2. Sales tax is imposed on the total cost of a unitary transaction.

Taxpayer protests the assessment of additional sales tax on a portion of certain sales. Taxpayer provided a chart showing that in 1994 Taxpayer sold 154 units, in 1995 it sold 203 units and in 1996 it sold 225 units. Taxpayer then contended that each sale price included a nontaxable service or installation fee of \$250.00 which should be deducted from the total amount used to determine the sales and use tax liability owed.

The first issue to be determined is whether Taxpayer sells the spas and installation services as a retail unitary transaction. Taxpayer buys the spas and related accessories in its regular course of business and resells these items. Thus there is no question that Taxpayer is a retail merchant. The real question is whether the transactions are unitary transactions as defined in the statute. To determine if the transactions are unitary retail transactions, one must determine if Taxpayer and its customers bargained separately for the tangible personal property and the installation services or if the spas and installation services were sold together as one transaction. To make this determination, one must examine the facts of the individual case. It is not reasonable to think that the installation services were always the same. Some installation services would include much more labor than other jobs. There was no indication that the requirements of any specific job were considered in the pricing. There was no indication of separate bargaining for the installation. The billings did not state separate charges for installation and tangible personal property. This lack of a separate itemization is another indication that the transaction was truly a unitary transaction and not one where the customer and Taxpayer bargained separately for the tangible personal property and the installation

services. As listed in the statutory definition, the transfer of the “property and the provision of services appear to have been furnished under a single order of sale or agreement and for which a total combined charge or price is calculated.” Therefore, Taxpayer’s sales qualify as retail unitary sales. As such the total amount of the invoice is subject to the sales tax.

FINDING

Taxpayer’s protest to the assessment of sales tax on unitary transactions is denied.

SALES AND USE TAX: EXEMPT SALES

DISCUSSION

Taxpayer only had copies of their 1994 ST-103 monthly filings. For the succeeding years there were no workpapers or other records which the Auditor could use to determine Taxpayer’s exempt sales. The Auditor was able to determine the exempt sales pursuant to the ST-103 filings for 1994. Taxpayer made a ratio of these exempt sales to the total sales for 1994 and contends that the same ratio should be applied to the 1995 and 1996 total sales to project the estimated value of exempt sales during those years. Taxpayer proposed that that estimated value of exempt sales for each of those two years be deducted from the total sales to determine the taxable sales. Taxpayer was not, however, able to produce any documentation establishing those exemptions except for the projection from 1994 records.

IC 6-8.1-5-1 clearly provides that Taxpayer has the burden of proving that the assessment is incorrect. In this case Taxpayer could not produce ST-103 forms, workpapers or any other documentation that the audit should have given Taxpayer credit for more exempt sales. Taxpayer did not fulfill its burden of proof.

FINDING

This point of Taxpayer’s protest is denied.

SALES AND USE TAX: Sales pursuant to a prescription issued by a Chiropractor

DISCUSSION

Taxpayer did not collect sales tax on any spa purchase for which the customer provided a chiropractor’s prescription. Taxpayer contends that these sales qualify for exemption pursuant to IC 6-2.5-5-18(a) which exempts sales of medical equipment and devices “if the sales are prescribed by a person licensed to issue the prescription.”

IC 25-10-1-1 states in pertinent part:

- (1) “Chiropractic” means the diagnosis and analysis of any interference with normal nerve transmission and expression, the procedure preparatory to and complementary to the correction thereof by an adjustment of the articulations of the vertebral column, its immediate articulation, and includes other incidental means of adjustments of the

spinal column and the practice of drugless therapeutics. However, chiropractic does not include any of the following:

- (A) prescription or administration of legend drugs or other controlled substances;
- (B) performing of incisive surgery or internal or external cauterization;
- (C) penetration of the skin with a needle or other instrument for any purpose except for the purpose of blood analysis;
- (D) use of colonic irrigations, plasmatics, ionizing radiation therapy, or radionics;
- (E) conducting invasive diagnostic tests or analysis of body fluids except for urinalysis;
- (F) the taking of x-rays of any organ other than the vertebral column and extremities; and
- (G) the treatment or attempt to treat infectious diseases, endocrine disorders, or atypical or abnormal histology.

Department of Revenue Regulation 45 IAC 2.2-5-27 states:

- (a) the term “person licensed to issue a prescription” shall include only those persons licensed or registered to fit and/or dispense such devices.
- (b) Definition: The term “prescribed” shall mean the issuance by a person described in paragraph 1 of this regulation [subsection (a) of this section] of a certification in writing that the use of the medical equipment supplies and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser’s body.

It is the Department’s position that chiropractors are not licensed to issue prescriptions.

FINDING

Taxpayer’s final point of protest is denied.